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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 **BARTH DENNIS CAPELA,**

Petitioner,

14
15 v.

16 **BOB HOREL, Warden,**

17 Respondent.
18

C 07-04734 SBA (PR)

**ANSWER TO ORDER TO SHOW
CAUSE**

19 Respondent hereby provides this answer to the order to show cause why the petition for
20 writ of habeas corpus should not be granted.

21 **I.**

22 **INTRODUCTION**
23

24 Petitioner is lawfully in the custody of Bob Horel, Warden of California State Prison,
25 Solano, as a result of a judgment of conviction in Santa Clara County Superior Court Case No.
26 FF302986 for attempted robbery and two counts of misdemeanor assault. Petitioner was sentenced
27 to 19 years in state prison.
28

II.**GENERAL AND SPECIFIC DENIALS**

Respondent denies that the state court's ruling was based on an unreasonable determination of the facts or was contrary to or involved an unreasonable application of clearly established United States Supreme Court law. Respondent specifically denies that (1) the knife evidence was improperly admitted; (2) the evidence of petitioner's lack of motive to steal was improperly excluded; (3) instructional error occurred; (4) cumulative error occurred; (5) prosecutorial misconduct occurred; and (6) petitioner's due process rights were violated by the denial of access to legal materials and appointment of advisory counsel.

III.**PROCEDURAL DEFAULTS**

Claim 6 does not state a federal claim. Petitioner's federal habeas petition was timely filed.

IV.**LODGED EXHIBITS**

Respondent has lodged concurrently with this answer the following exhibits: (1) State Court Clerk's Transcript (2 volumes); (2) Augmentation to the Clerk's Transcript on Appeal (1 volume); (3) State Court Reporter's Transcript (13 volumes); (4) State Court Reporter's Transcript Augmentation of the Record (4 volumes); (5) State Court Reporter's Transcript March 29, 2004 session (2 volumes); (6) Appellant's Opening Brief (H028273); (7) Appellant's Supplemental Opening Brief (H028273); (8) Respondent's Brief (H028273); (9) Appellant's Reply Brief (H028273); (10) Unpublished opinion by the California Court of Appeal (H028273); (11) Appellant's Petition for Review (S143236); (12) Register of Actions-California Courts-order denying petition for review (S143236); (13) Petition for Writ of Habeas Corpus filed in California Supreme Court (S151537); and (14) Register of Actions-California Court-order denying habeas

petition (S151537). Respondent hereby incorporates by reference the accompanying memorandum of points and authorities.

Dated: September 8, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

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/s/ Pamela K. Critchfield

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20140985.wpd

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Barth Dennis Capela v. Bob Horel, Warden**

No.: **C 07-04734 SBA (PR)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 8, 2008, I served the attached

ANSWER TO ORDER TO SHOW CAUSE;

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ANSWER;

NOTICE OF LODGED EXHIBITS IN SUPPORT OF ANSWER

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Barth Dennis Capela
V-58262
California State Prison, Solano
P.O. Box 4000
Vacaville, CA 95696-4000**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 8, 2008, at San Francisco, California.

J. Wong

Declarant

J. Wong

Signature